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‘A very high price to pay?’: Transforming Rehabilitation and short prison sentences for women

Julie Trebilcock and Anita Dockley

Introduction

Significant increases to the prison population in England and Wales during the last twenty years have generated concerns about the over-use of imprisonment, particularly for women and those serving a short sentence. In 2010, major changes to the criminal justice system were proposed by the coalition government, including the introduction of new Community Rehabilitation Companies (CRCs) and a ‘Payment by Results’ (PbR) scheme whereby financial rewards are given for reducing levels of reoffending (MoJ, 2010; 2013h; 2013i). Other significant developments in the new *Transforming Rehabilitation* (TR) agenda (MoJ, 2013h; 2013i) include the introduction of resettlement prisons, “through the gate” services and statutory supervision for short sentence prisoners after release. Drawing from the findings of an interview survey of twenty-five short sentence women prisoners and prison staff, this chapter provides an overview of the short term imprisonment of women in England and Wales.¹ Key areas of the TR reforms are explored and the chapter concludes by considering the risks and opportunities they may present for women sentenced to, or eligible for, a short prison sentence.

The short term imprisonment of women in England and Wales

Every year over 60,000 adults receive a short prison sentence of less than twelve months. Under the Offender Rehabilitation Act 2014 (ORA 2014) this group will be subject to statutory supervision after release. Historically this group usually served half their sentence in custody and the remainder in the community on license, with no post-release supervision or intervention from probation (unless they were aged between 18 and 21 years). This is despite the fact that short sentence prisoners have the highest re-conviction rates among adult prisoners (MoJ, 2013a), and the cost of crime committed following release from a short prison

¹ Pseudonyms are used to protect the identity of participants.

sentence is estimated to be between £7-10 billion each year (National Audit Office (NAO), 2010).

On 27 June 2014 3,935 women were in prison in England and Wales, 88 more than on the same day in 2013 (MoJ, 2014c) and 135 in excess of the highest projection for this date (MoJ, 2013d). While prosecution rates for men and young people have been falling since 2004, the numbers of women subject to prosecution have remained stable (MoJ, 2014a). Women are six times more likely to be convicted of a summary than an indictable offence and the vast majority (69.3%, n=2212) of women sentenced to immediate custody are convicted of non-violent offences (MoJ, 2014b). Latest statistics indicate that more than half (51.8%, n=3,691) were sentenced to three months or less, a further 19.2% (n=1,365) for between three and six months and 5.9% (n=697) for between six and twelve months (MoJ, 2014a).

The challenges faced by women who come into contact with the criminal justice system have long been recognised (see for example Carlen, 1983; 1990; Carlen and Worrall, 2004; Heidensohn, 1985). Previous research has identified high levels of physical, sexual and emotional abuse among women who offend (Morris, Wilkinson, Tisi and Woodrow, 1995; Rumgay, 2004). Women in prison are more likely than men to have been in care (Williams, Papadopoulou, and Booth, 2012) and more than half report having been victim to domestic violence (Social Exclusion Unit (SEU), 2002). Approximately 70% of women in prison have no qualifications and more than a third are unemployed before being sent to prison (SEU, 2002). Problems with substance misuse and psychological health tend to be more severe for prisoners who are adult, female and sentenced to less than twelve months (Stewart, 2008). Indeed, women account for a disproportionate number of self-harm incidents in prison (MoJ, 2014d), and 70% of women in prison have two or more mental health disorders (SEU, 2002). On arrival at prison, a third of women report that they have drug problems and a fifth report problems with alcohol (Her Majesty's Inspectorate of Prisons (HMIP), 2010).

Such characteristics mean that women may find it harder to adapt to prison than men (Carlen, 1998) and find themselves particularly disadvantaged by a system 'conceived by, intended for and dominated by men' (Scott and Codd, 2010:34). Women have often been overlooked or neglected in the development of 'what works' initiatives, and the evidence for how to best

support this group and reduce their reoffending continues to be less developed (Gelsthorpe and Hedderman, 2012). The consequences are that prison 'frequently does not meet their needs, nor take account of their different life experiences' (Fawcett Society, 2004:1).

These insights were supported by our research with short sentence women and prison staff (Howard League, in press). The women had a complex range of needs and often reported high levels of mental health problems and substance misuse prior to their imprisonment. Of particular concern was that these characteristics added to the challenges of adapting to the prison environment. One woman told us:

I'm a fragile sort of person and I don't know what I'm doing. On the outside I had a carer. I had to have support. I had to be with someone at all times. And now since I've been in here ... prison is making me worse. I'm trying to do it but when I am behind the door I just break down (Gina, Theft, 6 month sentence).

Many women were particularly anxious about what they had lost as a consequence of imprisonment. As a result of imprisonment a third of women prisoners lose their home (SEU, 2002) and a third of women prisoners anticipate being homeless on release (Howard League, 2005). A key issue for the women in our sample was housing, which they viewed as something that could assist or hinder their rehabilitation. Those who were reliant on housing benefit were often concerned about losing their accommodation on the outside and many expressed anxiety about being placed in hostels because of the characteristics and drug misuse of other residents. The detrimental consequences of losing housing (or other positive aspects of their lives like children and employment) represented common themes. One woman told us:

It is a very high price to pay if you are going to lose your kids and your house, all for shoplifting, or other petty little crimes ... The first time I come in here I lost my kids to social services because I wasn't able to look after them. And then I lost my home because the bill hadn't been paid. So I got out with nothing. So when you go back out, it is hard to like get all of that back. They just expect you to go back to normal. But how are you supposed to do that when you are homeless and you've got no kids? (Maddie, Robbery, 12 month sentence).

This quote demonstrates how imprisonment can place additional strain on women because of their role as primary carers for children and other family members (Medlicott, 2007;

Walker and Worrall, 2000). Women often struggle to maintain contact with their children while in prison (Sheehan and Flynn, 2007) and their children may experience emotional, social and material damage as a result (Howard League, 2011). The majority of women in our research expressed considerable regret and shame about the negative impact their imprisonment was having on their children and other family members. One woman told us:

My mum is a bit rocky, well not rocky, but she can't deal with this, she can't get hurt anymore. She went all through it with my sister. My sister lost five kids to social services, and now I'm involved with social services, and she's like "no I can't deal with this" and so she has kind of shut the door. I think that is to protect herself kind of thing (Vicky, Shoplifting, 4 month sentence).

In addition to feelings of loss and shame, many women indicated their imprisonment made it difficult to resolve the challenges they were experiencing in their lives. This highlights how there is often limited access to offending behaviour programmes, education and work (NAO, 2010) and that some short sentence prisoners do not have access to sentence planning assistance and offender supervisors (HMIP, 2012: 70). With limited opportunities to address their problems, many women were anxious about their release:

I'm absolutely cacking myself. It's not flown by, but it's not dragged out. But yes it has gone too quickly for anything to have been done (Caroline, Assault, 4 month sentence).

While staff highlighted many areas of good practice and clear attempts to help women serving short sentences, they also indicated that a short term prison sentence was inadequate for supporting longer-term rehabilitation. Staff were generally negative about the utility of a short prison sentence and many expressed concern about the destabilising impact that imprisonment could have on the lives of women and their children. Staff expressed concern that short sentence prisoners often received little practical support on release and frequently commented on the need for more intensive long term support:

Sometimes they don't know where to go or what to do ... That support that they had in prison is suddenly gone because they've left ... The minute they come up against a brick wall, they don't know who to turn to then. There's no support. So what do they do? They go back to what they know, and then they come back in (Paula, Senior prison officer).

Staff also pointed to the difficulties involved with resourcing effective interventions with short sentence women prisoners. The resource-intensive nature of short prison sentences, coupled with the anticipated low success rate, added to the negative views some staff held about short prison sentences. One member of staff commented:

It can be disheartening with the churn and seeing the same faces over and over again. But the main thing is to try and keep them alive and try to educate them ... We do often have to put a lot of work into one individual and support their needs (Tara, Drugs worker).

Many women appeared to lack confidence in their ability to avoid reoffending on their release. Various reasons were given including ongoing drug and alcohol issues, homelessness or anxieties about returning to the same geographical area. Those who had served several prison sentences were particularly pessimistic about life on the outside, highlighting that the accounts of ‘revolving door’ prisoners are often characterised by fatalism because of concerns about homelessness and addiction (Howerton, Burnett, Byng and Campbell, 2009). Such findings lend further support to Armstrong and Weaver’s (2010:3) concerns, that it is ‘the cumulative effect of doing many short sentences, more than the experience of any single sentence, which carries the largely negative impacts’. One woman reflected on the failure of numerous short prison sentences to provide the help she needed:

I think I have got something like 38 convictions, all for shoplifting and that sort of thing. So there is a problem in there, and obviously, jail, it is not working ... They need to sort something out to help people on drugs. You just can’t do a detox on a short sentence, you need a longer time to do it. But then going out into the community is hard, because you are back where you was before (Vicky, Shoplifting, 4 month sentence).

In contrast to our research with men serving short prison sentences (Trebilcock, 2011), the women in our study were generally more positive about community sentences and probation than they were about prison. While some (though significantly fewer than in the male sample) indicated that a short prison sentence had the benefit of allowing them “time out”, many pointed to the damage that their imprisonment had caused. Those who had previously served community penalties usually indicated they had had supportive and constructive experiences of working with probation. One woman described her relationship with her previous probation officer as follows:

I had an excellent relationship with my probation officer ... Really supportive and that ... She spent the time listening to my problems ... And it calmed me down and really helped me with certain issues (Lucy, Assault, 6 month sentence).

While the women commonly described positive experiences of working with probation, the majority who had served community sentences also indicated they had a history of breaching them. Many attributed this to ongoing substance misuse, although some also described situations where they felt they had been “set up to fail” because appointments had been made at inconvenient times in relation to their childcare responsibilities. A small number of staff expressed similar concerns that it was sometimes too easy for women to fail to meet the requirements of their community sentence. One resettlement worker told us:

We had someone the other day, and she missed probation twice, but in many ways it was through no fault of her own because the appointments were too early and she had to get her kids to school, didn't have a car, so by the time she dropped the kids off she was 15 minutes late. They breached her and sent her to prison (Helen, Resettlement case worker).

Key Transforming Rehabilitation reforms

Many of the themes explored above will be familiar to those who work with women serving short prison sentences. Reforms to the criminal justice system brought about by the coalition government (see MoJ, 2010; 2011; 2012; 2013h; 2013i) and under the ORA 2014, have the potential to impact significantly on this group of women. In the remainder of this chapter we outline some of the key TR reforms before reflecting on the possible consequences for women who are either eligible for, or sentenced to, a short prison sentence.

Introduction of new Community Rehabilitation Companies

A significant change being brought about by TR is the introduction of new CRCs. High risk offenders such as those subject to Multi-Agency Public Protection Arrangements will continue to be managed by the National Probation Service while newly created CRCs will be responsible for delivering probation services in the community to the majority of low and medium risk offenders. CRCs came into force on 1 June 2014 and may now enter into agreements with local authorities to provide services that would previously have been delivered by Probation

Trusts. Commissioning is structured by a straw man system of payments where a fixed fee for service can be topped up by additional PbR payments to incentivise good performance (MoJ 2013e).

Introduction of statutory supervision for short sentenced prisoners

Section 2 of the ORA 2014 requires that all offenders sentenced to one day or more in prison will be subject to at least twelve months statutory supervision after release. Post-sentence supervision should usually involve eight requirements, although some can be omitted if the governor of the releasing prison agrees they are not suitable or necessary to support rehabilitation. Standard requirements include living at a specified address, being of good behavior and keeping appointments. Two further supervision requirements, drug testing and drug appointments, can be requested by the supervisor if deemed appropriate. Guidance under PSI 31/2014 / PI 29/2014 lists the eight requirements in full and insists they are 'more limited in type and number' than those attached to prisoners on license, because post-sentence supervision should be primarily focused on rehabilitation (National Offender Management Service (NOMS), 2014).

Introduction of resettlement prisons and "through the gate" services

Another key aim of TR has been to reconfigure the prison estate to create a network of resettlement prisons across the country, with service delivery based on a "through the gate" model. Given the small number of women's prisons, all twelve will be reconfigured as resettlement prisons. Each resettlement prison will be aligned with one of 21 new contract package areas (CPAs) and providers will be expected to work with people in custody and in the community following release.² It is proposed that short sentence prisoners spend their whole sentence in a resettlement prison while longer sentence prisoners should move to a resettlement prison at least three months prior to release. Further details about proposed changes to the female prison estate and information about TR pilots including a Through the Gate Substance Misuse Service and an Open Unit for 25 women at HMP Styal were published in October 2013 (NOMS, 2013b).

² In February 2014 the MoJ published a revised list of resettlement prisons and their CPAs, which is available here: <http://www.justice.gov.uk/downloads/rehab-prog/resettlement-prison-list.pdf>

Transforming the rehabilitation of short sentence women?

Following the deaths of six women in a twelve month period at HMP Styal, the Corston report was published (Home Office, 2007). Corston argued for alternatives to prison for women to be developed, and expressed particular concern about the use of short prison sentences. Since publication of the report, government recognition of the different needs of women and the benefits of a different criminal justice response has developed (see Kendall, 2013 for a review). However, many of Corston's recommendations were not taken forward by government (Corcoran, 2010b) and the new TR reforms present both 'risks and opportunities for the Corston agenda' (Justice Select Committee, 2013:5). Given current uncertainties about how TR will meet the needs of women or how the reforms will work in practice, we conclude our chapter by considering the possible implications of TR for women either sentenced to, or eligible for, a short prison sentence.

Ensuring services are gender-responsive

In March 2013 the government published its Strategic Objectives for Female Offenders (MoJ, 2013f) and established a Ministerial Advisory Board for Female Offenders. These were followed in October 2013 with a response to the Justice Select Committee's report concerning women who offend (MoJ, 2013b), a review of the female custodial estate (NOMS, 2013b), and a stocktake of community services for women (NOMS, 2013a). An amendment was also made to the ORA 2014 to ensure that arrangements for the supervision and rehabilitation of offenders comply with the public sector duty under section 149 of the Equality Act 2010. Reflecting this, gender specific requirements have been incorporated into the tendering process, which stipulate that providers should endeavour, where possible: to give women the option to have a female supervisor; allow women to attend appointments in a female-only environment; and, ensure women are not forced to undertake unpaid work in male-only environments (MoJ, 2014e). Supporting guidance has also been issued to ensure potential providers are sensitive to the need to accommodate women in their service delivery.

Such developments lend credence to the MoJ's (2013i:10) claim that they will 'develop provider contracts which ensure that appropriate services are provided, and that there is increased flexibility to tailor rehabilitation to the needs and characteristics of the individual'.

However, as the contracts roll out ³, how, and the extent to which gender-specific requirements are addressed in practice, need to be scrutinised. It will be important to assess the options actually offered to women and how these may differ across CPAs given the cost-sensitive environment in which new initiatives will emerge.

One area of practice, championed by Corston, has been the development of women's centres (see Joliffe, Hedderman, Palmer and Holin, 2011; Radcliffe and Hunter, 2013 for more information). If gender specific requirements are to be properly met, women's centres may have a key part to play in delivering services to women. Indeed, TR could be a driver to expanding or sustaining such provision. However, women-centred provision and the manner in which it is delivered is both complex and expensive. It is essential that these centres continue to have access to sufficient funding. Moreover, women's centres provide services that are available to all women in the community and the strength of this inclusive approach should not be lost. Care should be taken not to alienate non-offenders from using services but this may be difficult in the context of an increasingly offender focused funding stream. Equally, it is important to ensure women in contact with the criminal justice system feel that women's centres are genuinely a *place for them*.

While gender responsive treatment has been found to be effective (Saxena, Messina and Grella, 2014), others warn that gender-sensitive punishment can have unintended and possibly negative consequences for women (Kendall, 2013). Research has found that despite government funding the development of women's centres has not led to increased diversion of women from custody (Joliffe *et al.*, 2011). Others have observed how gender-responsive practices may frame women who offend as 'fundamentally flawed' and 'fixable', and by focusing on individual deficits 'structural issues disappear from view and correctional practices gain legitimacy because it is claimed they can address women's needs' (Kendall, 2013:45). This reminds us that reducing offending by women is not simply a matter for the criminal justice system (Carlen, 2013; Justice Select Committee, 2013), and structural inequalities experienced by women also need to be addressed elsewhere.

³ All CRC contracts are due to be in place and ready by the end of March 2015.

Ensuring the new “criminal justice market” offers quality as well as value for money

Concerns about the introduction of a “criminal justice market” and its implications for women are discussed more fully elsewhere in the book (CROSS-REFERENCES; see also Corcoran, 2010a; Gelsthorpe and Hedderman 2012; Howard League, 2013). Providers who can demonstrate positive results will have resources directed towards them. However, the way in which results will be measured continues to be uncertain. Moreover, in the context of significant budgetary cuts across government and the inevitably cost-sensitive priorities of CRCs, it is difficult to envisage what services may be financially viable or desirable. Moreover, it is unclear what capacity the voluntary sector will have to flourish in an arena that will be cost-sensitive and structured by the ethos of PbR. There is a risk that small but effective voluntary organisations may be unable to compete, or lose their original ethos as a result of the TR reforms. Uncertainty around the funding of women’s services has raised problems before (Hedderman, 2012) and has the potential to impact on staff morale and service user engagement. Concerns about staff-to-prisoner levels, lower pay and high staff turnover in the private sector management of prisons (Grimwood, 2014; Nathan, 2011) alongside estimates that the extra costs of statutory supervision could amount to £30 million per year (MoJ, 2013c; 2013j), raise additional concerns about the quality, value, and delivery of services under TR.

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Supporting the effective implementation of resettlement prisons and “through the gate” services

While the aim of creating new resettlement prisons is to ensure that ‘most offenders are given continuous support by one provider from custody into the community’ (MoJ, 2013i:6) it is difficult to see how this will work in the female estate. All twelve women’s prisons will be designated resettlement prisons but many women will inevitably find they are held in a prison that is outside their ‘home’ CRC, meaning the services they receive in prison and in the community will be delivered by different providers. If a woman is not directly supported by her ‘home’ CRC in prison it appears that the ‘home’ CRC will be expected to buy in services from the host CRC.

This presents a number of challenges to the effective implementation of CRCs. Given increasing prison numbers are currently higher than projected (MoJ, 2013d), the extent to which close to home constructive regime activities and staff support will be available through

the gate is unclear. There is a risk that the limited access short sentence prisoners have to offending behaviour programmes (NAO, 2010), sentence planning assistance and offender supervisors (HMIP, 2012: 70), will continue or even worsen under the new CRC model because of funding and budgetary concerns. Many resettlement initiatives, such as the Open Unit at HMP Styal, are likely to be reserved for women serving longer sentences, but it is essential that sufficient resources are also offered to the short sentence population. Effective management of transfers between different CRCs will also be crucial given an individual's relationship with their probation officer is significant in terms of their future offending (McNeill, 2005; Shapland *et al.*, 2012; Wood *et al.*, 2013).

Communication between different providers and the women in receipt of their services will need to be of a high quality. If services are to operate truly 'through the gate', the reconfiguration of the women's estate and new services need to be properly communicated to prisoners, outside agencies and the courts. Concerns have already been raised that the TR reforms have not been well communicated to many women in prison, which is heightening anxieties about where they will serve their sentence (Women in Prison, 2014).

Avoiding disproportionate punishment and increases to the short sentence population

Perhaps the way short sentence women prisoners are most likely to benefit from TR is with the introduction of post-release statutory supervision. However, statutory supervision will disproportionately affect women and concerns have been expressed that it may amount to 'disproportionate and unfair punishment' (Prison Reform Trust (PRT), 2013: 3). Others have questioned if twelve months of supervision, irrespective of the length of imprisonment, is entirely necessary or appropriate (Annison, Burke and Senior, 2014).

Concerns have also been raised that statutory supervision may serve to increase the female prison population on the basis that short prison sentences come to be viewed more positively by the courts who may find reassurance in the statutory obligation to supervise and support women after their release (PRT, 2013). Player (2005:425) observes that 'the courts have tended to favour sentences that address the welfare needs of women rather than those that adopt a primarily retributive response'. However under a "welfare" approach, women may find that their sentence is "up-tariffed" in an attempt to secure high levels of supervision

and/or custody to help “care” for women who come before the courts (Player, 2005). Research with sentencers has found that while they are skeptical about the extent to which imprisonment achieves what it should do, some nevertheless believe that prisons have the capacity to provide people with access to services that are not available in the community (Tombs and Jagger, 2006).

It is important that the courts are properly informed about TR and the provision of services in both custody and the community. There is a risk that, if unaware, the judiciary will continue to sentence women as they have done before and may be averse to making decisions that could be perceived as either lenient or unsafe in the context of new and unknown services. Recent research suggests that sentencers’ awareness of Women’s Community Services (WCSs) is low (Joliffe *et al.*, 2011; Radcliffe and Hunter, 2013). Moreover, magistrates have expressed concerns about the uneven provision of WCSs across the country and how sustainable they are in the current economic climate (Radcliffe and Hunter, 2013). However, the MoJ has been undertaking educative work with sentencers in the Greater Manchester area, hopefully indicating an appreciation of the need to ensure the judiciary are properly aware of the TR reforms and able to develop a clear understanding of what holistic provision may be available, and where.

The final area of concern is that statutory post-release supervision will increase the risk that women are returned to court, and possibly prison, for failure to comply with the requirements. In particular, the new optional “drug testing” supervision requirement, given the high proportion of short sentence women with substance misuse issues, may have significant consequences. Tough supervision requirements could have the unintended consequence of increasing the use of short spells in prison to manage low-risk and non-violent women. It is important that the requirements and a woman’s ability to meet them are considered in a flexible and genuinely rehabilitative manner. Moreover, providers need to properly understand the needs and sometimes chaotic lives that many women in the criminal justice system may have. If supervision is to be genuinely rehabilitative it should be measured by what Hough, Farrall and McNeill (2013:17) have termed “normative compliance” whereby people are encouraged to buy into desistance rather than being ‘cajoled or supervised into doing so’.

Conclusions

The privatisation of probation services and introduction of statutory supervision for all short sentence prisoners represent a significant departure from previous policies and will have a clear impact on women eligible for, or sentenced to, a short prison sentence. It is therefore essential that the reforms are subject to post-legislative scrutiny and the impact on women is closely monitored. Our research generally lends support to the concern that 'prison is an expensive and ineffective way of dealing with many women offenders' (Justice Select Committee, 2013:4). Locking women up for short periods of time has the potential to exacerbate many of the problems these women experience. Hence, it is important that services in the community continue to be developed and enabled to be sufficiently innovative and flexible in their delivery to women. Evidence suggests that community based approaches, properly tailored to the gendered needs of women, are likely to be far more effective both in terms of reducing the likelihood of reoffending and for enabling women to feel supported to turn their lives around. Continuity of care, rather than an extension of punishment, needs to be achieved to break the cycle of women's offending. It is important that market-based priorities do not undermine attempts to provide women with individualised and appropriate services that help support them on a path to desistance. Finally, the introduction of statutory supervision must be closely monitored to ensure that it does not lead to "up-tariffing" at court or increasing the number of women being returned to prison for failing to meet the requirements. Should this happen, the TR reforms would be a very high price to pay, not only in financial terms but also in social and material terms for the increasing number of non-violent and low risk women sent to prison.

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